IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1565 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HERIS OF DECEASED SARDARJI RANCHHODJI DABHI

Versus

DABHI BHALAJI SHIVAJI

Appearance:

1. Civil Revision Application No. 1565 of 1997

MR VC DESAI for Petitioner No. 1-6

MR MA KHARADI for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/03/2004

ORAL JUDGEMENT

The petitioners are the original plaintiffs of Regular Civil Suit No.130/1992, which is pending before the Civil Judge (J.D.) at Kadi. In the aforesaid suit,

the petitioners-original plaintiffs gave an application before the trial Court, stating that the document in question, which the defendant sought to produce, which is at Mark 93/1, is a document of sale and that document is not properly stamped under the provisions of Section 33 of Bombay Stamp Act and, therefore, the same is required to be impounded. The trial Court, by passing the order below Exh.107, came to the conclusion that since the document is sought to be produced by the defendant and not by the plaintiff, the same is not required to be impounded. After making certain observations, the trial Court has rejected the said application. The said order is under challenge at the instance of the original plaintiffs in this revision.

2) Mr.Desai has vehemently argued that the order in question is not sustainable at all. He submitted that the question whether the document is coming from the custody of the plaintiff or the defendant, makes no difference and the Court has to impound the same, if it is not properly stamped.

3) It is not in dispute that the impugned order is an interim order, passed in a pending suit and in view of the amendment in Section 115 of C.P.C., this Civil Revision Application is not maintainable, as it is filed against an interim order. As this revision is not maintainable, it is not possible for this Court to offer any remarks regarding the observations made by the trial Court in the impugned order. Under these circumstances, without examining the merits of the matter, this Civil Revision Application is disposed of, as the same is not maintainable. However, it is clarified that this Court has not expressed any opinion on merits and this matter is not entertained only on the ground of non-maintainability. It is clarified that it will be open for the present petitioners to challenge the impugned order by filing a petition under Article 227 of the Constitution of India, if they so desire.

4) This Civil Revision Application is accordingly disposed of, as the same is not maintainable. Rule is discharged. No order as to costs.

(P.B.Majmudar,J.)
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